In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 3751 of 2005

Date of Decision: 23.11.2006

Nirbhai Singh and others.

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. Vivek Thakur, Advocate
for the petitioners.

Mr. Ashok Aggarwal, Addl. A.G., Punjab and
Mr. B.S. Chahal, AAG, Punjab
for the respondents.

...

J.S. Khehar, J. (Oral).

While issuing notice of motion, this Court passed the following order on 7.3.2005:-

"Learned counsel for the petitioners has invited Court's attention to Annexure P-1 in order to depict that the petitioners have qualified the Lower School Course. He also invited this Court's attention to the judgement rendered by this Court in Tara Singh and others Vs. State of Punjab and others, CWP No.16997 of 2001, in order to substantiate that the petitioners were liable to be regularised on completion of two years probation period. It is submitted that although the petitioners were given the charge of the post of Head Constable in the year 1988, the petitioners have still not been confirmed against the rank of Head Constable.

Notice of motion for 26.7.2005."

Learned counsel for the petitioners has also invited our attention to the operative part of the judgement rendered in Tara Singh's case (supra), wherein it is recorded as under:-

> "Thus the petitioners are entitled to be confirmed w.e.f. the years 1988/1989 after two years of their probation period and are entitled to further promotion on the basis of their confirmation and length of service. Consequently the writ petition is accepted and respondents No.1 to 4 are directed to confirm the petitioners as Head Constables w.e.f. 1988/1989 as they had been promoted in the years 1986/1987 as Head Constables. Further they have the right to be considered for promotion in view of their considering date of promotion as from 1988-89 and thus seniority list be prepared accordingly."

In view of the aforesaid judgement, learned counsel for the petitioners states, that the petitioners ought to be confirmed on completion of two years' service with effect from the date they were promoted as Head Constables. On the basis of the aforesaid assertion, and the right to be confirmed on the completion of the period of two years, the petitioners claimed seniority above respondents No.5 to 7. The details of the dates of promotion to the rank of Head Constable, in so far as the petitioners are concerned, have been depicted in Annexure R-1, as under:-

"<u>Name</u> <u>Date of promotion as Head Constable</u>

(i) Nirbhai Singh 12.10.1988
(ii) Darbara Singh 26.11.1988
(iii) Dharampal 26.11.1988."

As against the aforesaid, qua respondents No.6 and 7, it is asserted as under:-

"<u>Name</u> <u>Date of promotion as Head Constable</u>

(i) Balkar Singh 12.10.1988
(ii) Santokh Singh 26.11.1988."

Qua respondent No.5 Gurjit Singh, it is averred in the written statement, that the promotion and seniority of Gurjit Singh, is inconsequential on account of the fact,

that Gurjit Singh does not belong to Muktsar District, whereas, all the petitioners belong to Muktsar District, and as such, the impleading of respondent No.5 in the instant writ petition, is improper as the petitioners are not to be evaluated in terms of seniority viz. respondent No.5.

Having examined the comparative dates of promotion of the petitioners and those of respondents No.6 and 7, we are satisfied, that respondents No.6 and 7 were promoted as Head Constables w.e.f. 1.9.1988 i.e. with effect from a date, preceding the dates on which petitioners No.1 to 3 were promoted as such. Therefore, even if, the contention of the learned counsel for the petitioners, based on the judgement rendered by this Court in Tara Singh's case (supra) is accepted as correct, the claim of the petitioners for confirmation cannot precede the date of confirmation of Balkar Singh and Santokh Singh – respondents No.6 and 7, on account of the fact, that they were promoted to the rank of Head Constable prior to the promotion of the petitioners. In view of the above, it is not possible for us to accept the claim of the petitioners on the issue of superiority viz. respondents No.6 and 7.

It would be pertinent to mention, that the learned counsel for the petitioners, during the course of arguments, has invited our attention to the prayer clause in the instant writ petition, wherein, it is prayed as under:-

> "(i) a writ in the nature of Certiorari/Mandamus, of any appropriate writ, order or direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case directing the respondent No.1 to 4 to produce the record concerning to the deputing of Head Constables to the Intermediate School Course, which commenced from time to time and especially after March 10, 2004 and quash the appointments/promotions of the person who are junior i.e. respondents No.6 and 7 and other whose name and address have not been made available to the petitioners and was sent for

Course in contravention to the rules and regulations and thereafter direct the respondents No.1 to 4 to prepare the seniority list from the date of passing the Lower School Course and thereafter confirm and promote the petitioners and depute them to the Intermediate School Course being senior to the Head Constables i.e. respondent No.4 and others."

Learned counsel for the petitioners has also invited our attention to the part of the prayer made by the petitioners, wherein, it is asserted, that the petitioners' claim should also be considered viz. "...and other whose names and address have not been made available to the petitioner...".

It is not possible for us to accept the instant prayer of the petitioners in the absence of the affected parties. Suffice it to state, that the claim as raised by the petitioners, has been adjudicated by us qua all those, who have been impleaded as party – respondents in the instant writ petition.

For the reasons recorded above, the instant writ petition is dismissed.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

23.11.2006
sk.